



May 25, 1999

Mr. Marvin Foust  
Assistant City Attorney  
City of El Paso  
Office of the City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR99-1456

Dear Mr. Foust:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124650.<sup>1</sup>

The City of El Paso received two open records requests for certain records that you contend may be withheld from the public pursuant section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance, you have made the requisite showing that the requested information, a representative sample of which you submitted to this office, relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld.<sup>2</sup>

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or

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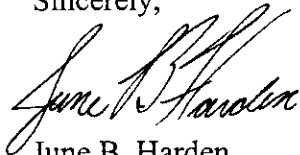
<sup>1</sup>Your March 10, 1999 request for an open records decision, previously assigned ID# 124710, has been combined with this request.

<sup>2</sup>You have submitted to this office as representative of the requested information various responses the city received in its prevailing wage survey, a table reflecting the results of the survey, and handwritten notes from a meeting created by an unnamed individual. In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded.<sup>3</sup> Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/ch

Ref.: ID# 124650

encl. Submitted documents

cc: Ms. Laura Smitherman  
El Paso Times  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)

Mr. Jeffrey A. Brannen  
Canterbury, Stuber, Elder, Gooch & Surratt  
5400 LBJ Freeway, Suite 1300  
Dallas, Texas 75240  
(w/o enclosures)

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<sup>3</sup>Because we resolve your request under section 552.103, we need not discuss the applicability of the other exceptions you raised.